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**OFFICE OF PETITIONS
ON PETITION**

In re Application of
Chhibber, et al.
Application No. 10/672,056
Filed: September 25, 2003
Attorney Docket No. 2501082-991101
For: HIGH DYNAMIC RANGE OPTICAL
INSPECTION SYSTEM AND METHOD

This is a decision on the petition filed March 1, 2004 (certificate of mailing date February 23, 2004), requesting, in effect, partial withdrawal of a Notice mailed December 22, 2003.

The application was filed on September 25, 2003. However, on December 22, 2003, The Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" (Notice) stating, *inter alia*, that the application had been accorded a filing date of September 25, 2003, and advising applicants that figures 23, 23A1 and 23A2 appeared to have been omitted.

In response, the present petition was filed. Petitioners argue that the drawings should be included with the papers filed on September 25, 2003, because they were originally filed in prior application No. 60/414,511, the entire disclosure of which was incorporated by reference at the time of filing.

The petition is dismissed.

Applicants seek to add the figures to the present application on the basis that the figures were incorporated by reference at the time the application was filed. However, no petition is necessary for that purpose. Additional figures may be entered by the primary examiner without a petition so long as the pages contain no new matter. See MPEP § 608.02(a).

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

If applicants desire that figures 23, 23A1, and 23A2 be added to the application, the appropriate procedure is by way of amendment requesting the entry of the figures. Any such amendment should be filed prior to the first action on the merits and will be considered by the primary examiner.

Accordingly, the petition is inappropriate and is subject to dismissal.

The petition fee will not be refunded, since the petition was not necessitated by any error on the part of the Office.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 25, 2003. It is noted that petitioners filed replacement drawings on March 1, 2004 (certificate of mailing date February 23, 2004). Replacement drawing figures 23, 23A1, and 23A2 will not be processed at this time.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712.



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